IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

[Court's order whether the case is approved for reporting or not under Chapter VIII Rule 32 (2) (b)]

Description of the case

Writ Petition No. 272 (S/B) of 2006

Balveer Singh Rawat **.... Petitioner.**

Versus

State of Uttaranchal
and others. **.....Respondents.**

Approved for reporting

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~~Not approved for reporting~~

Date of Decision : November 15, 2006

Initial of Judge(s)

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J U D G E M E N T R E S E R V E D

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 272 (S/B) of 2006

Balveer Singh Rawat,
S/o late Sri D.S. Rawat,
R/o G – 408, Nehru Colony, Dehradun,
Uttaranchal, presently posted
as Project Director (Administration),
Watershed Management Directorate,
Dehradun, Uttaranchal. **....Petitioner.**

Versus

1. State of Uttaranchal through Secretary, Watershed Management Department, Government of Uttaranchal, Secretariat, Dehradun, Uttaranchal.

2. Chief Project Director, Watershed Management (Jalagam) Department, Indra Nagar Forest Colony, Dehradun, Uttaranchal.

3. Additional Secretary, Watershed Management (Jalagam) Department, Indira Nagar Forest Colony, Dehradun, Uttaranchal.

4. Mr. W. Longwa, S/o Sri D. Longwa, R/o 309 Street No. 4, Rajendra Nagar, Dehradun, presently posted as Additional Director (Administration), Watershed Management Directorate, Dehradun, Uttaranchal.

……Respondents.

Coram:
Hon'ble M.M. Ghildiyal, J
Hon'ble Rajesh Tandon, J
(PC)

Heard Sri Sudhanshu Dulia, Sr. Advocate, assisted by Sri Vipul Sharma, learned counsel for the petitioner, Sri Subhash Upadhyay, learned standing counsel for respondents no. 1 to 3 and Sri Vijay Bhatt, learned counsel for respondent no. 4.

By means of this writ petition, petitioner has prayed for quashing of order dated 18.08.2006 passed by Additional Secretary, Van Gramya Vikas Shaka, Jalagam. By the impugned order, petitioner, who was earlier posted on deputation as project Director (Administration) in the Directorate of Watershed Management, Dehradun was repatriated to its original department and on the post of Project Director (Administration) one Sri W. Longwa – respondent no. 4 was posted.

Brief facts of the case, as narrated in the writ petition are that petitioner is officer in the Department of Rural Development, Uttaranchal, he was initially appointed in the year 1978 as Block Development Officer after having been selected and recommended by the State Public Service Commission, Allahabad, U.P. In the year 1992, hill sub cadre rules were framed under Article 309 of the Constitution of India creating separate hill sub cadre in 32 departments. Petitioner opted for Hill Sub Cadre and since then he has been serving under Hill Sub Cadre. After creation of State of Uttaranchal, petitioner opted for State of Uttaranchal and he has been finally allocated to the State of Uttaranchal. In the erstwhile State of U.P. Watershed Management was basically working from project to project basis and there was no permanent directorate of watershed department of the management. However, after creation of State of Uttaranchal it was felt that permanent Directorate considering specific need in the Hill of State of Uttaranchal was created on 15.05.2002. On 08.04.2004 Government issued order prescribing that the posting in the watershed management shall be filled by way of deputation from experts of Forest

Department, Rural Development, Agriculture, Panchayati Raj etc. It was provided that the experts of Forest Department would be selected for deputation by the duly selection Committee and Government Order also provided the Constitution of selection Committee for gazetted posts as also for non gazetted post. In pursuance to the Government Order, applications were invited from desirable and qualified persons for being appointed on deputation. The petitioner, who was working as Class I Officer (Chief Development Officer) in district – Rudraprayag, Uttaranchal applied for the post of Project Director (Administration) in Watershed Management Department and after being selected by the Selection Committee, he was found suitable to the post of Project Director (Administration) by the selection committee, consequently, his name was recommended for appointment on the post of Project Director (Administration).

Appointment letter was also issued to the petitioner on 25.10.2005. However, to the utter surprise of the petitioner by the impugned order he has been repatriated to the parent department and on the post held by the petitioner respondent no. 4 has been posted. Counter affidavit has been filed by all the respondents. Apart from detail counter affidavit respondent no. 2 has also filed supplementary counter affidavit. Petitioner has filed rejoinder affidavit.

Petitioner has challenged the impugned order on various grounds. First, that the impugned order has been passed by the respondents without giving any reason while he is being repatriated to the original department after curtailing the period of deputation from 3 years to 9 months as he has worked as Project Director (Administration) for 9

months and Government Order dated 08.04.2004 provides that deputation shall be for a period of three years.

Petitioner has drawn our attention to the Government Order dated 08.04.2004 issued by State of Uttaranchal which provides as under

" अतः राज्यपाल महोदय राज्य मुख्यालय स्तर पर तथा निदेषालय स्तर पर कार्मिक अनुभाग की प्रक्रिया के अनुसार संबधित अधिकारियों व कर्मचारियों को प्रारम्भ में 3 वर्ष की प्रतिनियुक्ति / सेवा स्थानांतरण पर तैनाती के लिए चयन हेतु निम्न समिति के गठन की स्वीकृति प्रदान करते हैं।"

Appointment letter dated 25.10.2005 by which the petitioner was posted as Project Director (Administration), the order reads as under:

"षासन के कार्यालय आदेष संख्या 746 / 116 (119) XIII – II / 2005 दिनांक 26/09/2005 में आंषिक संषोधन करते हुये श्री वी. एस. रावत, मुख्य विकास अधिकारी रूद्रप्रयाग को उनके मूल पद पर अनुमन्य वेतनमान रू 12000 – 16500 में जलागम प्रबन्ध निदेषालय के अर्न्तगत परियोजना निदेषक (प्रषासन) के पद पर प्रतिनियुक्ति पर तैनात किया जाता है। श्री रावत की प्रतिनियुक्ति की शर्ते पृथक से निर्धारित की जायेगी। कार्यालय आदेष संख्या 746 / 116 (119) XIII – II /2005 दिनांक 26/09/2005 उपरोक्त सीमा तक संषोधन समझा जाय। यह आदेष तत्कालिक प्रभाव से लागू होंगे।"

By the Government Order dated 08.04.2004, the Hon'ble Governor has approved the constitution of selection committee for selection on the gazetted posts in the watershed management on deputation initially for a period of three years. From the aforesaid extract of the Government Order, it is clear that the selection committee constituted for the purpose can select person for appointment on deputation initially for three years. The appointment order does not speak that the petitioner who has been selected on deputation on the post of Project Director (Administration) is being appointed on deputation for three years. The period of

appointment is to be found out from the appointment letter, which is silent as is clear from the appointment letter itself. On the contrary in the aforesaid Government Order dated 08.04.2004, it is also provided that

"अनुपयुक्तता की स्थिति में किसी भी अधिकारी / कर्मचारी को 3 वर्ष से पूर्व कभी भी वापस किया जा सकता है।"

The inference which can be drawn from the Government Order is that ordinarily the selection is made for a period of three years, however, person selected can be repatriated at any time if he is found unsuitable.

Though it is not mentioned in the impugned order dated 18.08.2006 why the petitioner has been repatriated to its original department. Respondent no. 1 has stated reasons in the counter affidavit filed by them that as per Government Order dated 08.04.2004 no officer having pay scale less than Rs. 16,400 – 20,000 and having age more than 52 years on 30.09.2004 can be selected for the post of Project Director (Administration) on deputation.

In the case of Chandra Bhushan Tripathi Vs State of Uttaranchal in writ petition no. 235 (SB) of 2006, the division Bench of this High Court dealing with the same issue has passed interim order to the extent that

"In any case, as emerges out from the Govt. Order dated 08.04.2004 issued by the State of Uttaranchal; a person can only be taken on deputation on the post of Deputy Project Director who is having the pay-scale of Rs. 10,000-15,200. Since the respondent no. 3 is working in Agriculture Department in the pay-scale of Rs. 8,000-13,500 thus, he cannot be posted, on deputation, on the post

of Deputy Project Director which is utterly in violation of aforesaid Govt. Order dated 08.04.2004."

Respondents have stated in the counter affidavit that since on the post of Project Director (Administration) a person cannot be selected on deputation who is having pay scale less than Rs. 16,400 – 20,000 and is not more than 52 years of age, the petitioner was not eligible to be selected as he was not having pay scale of Rs. 16,400 – 20,000 and has completed more than 55 years of age. Petitioner has not disputed this fact that prior to appointment on the post of Project Director (Administration) he was not having the pay scale of Rs. 16,400 – 20,000 and he is working in the pay scale of Rs. 12000 – 16500 and also he was more than 52 years of age.

It is true that reason has not been recorded in the impugned order and by giving reasons in the counter affidavit impugned order under challenge cannot be improved but at the same time the fact cannot be ignored that the petitioner was not entitled to be selected on deputation for the post of Project Director (Administration) as per Government Order dated 08.04.2004. Since the appointment of the petitioner on the post of Project Director (Administration) was illegal and contrary to the Government Order dated 08.04.2004, consequently, repatriation of the petitioner to his parent department in not illegal.

Learned counsel for the petitioner has submitted that respondent no. 4 was not selected by the selection committee as provided under Government Order dated 08.04.2004.

It is not disputed that respondent no. 4 is an IFS Officer working in the pay scale of Rs. 16,400 – 20,000. From the perusal of impugned order, it is clear that respondent no. 4 was already working in the watershed management and he has been posted on the post of Project Director (Administration). It is not the case of the petitioner that appointment of respondent no. 4 in watershed management was without proper selection as prescribed under Government Order dated 08.04.2004. Since the respondent no. 4 was already working in the Watershed Management, we do not find any illegality in his being posted in the same department on deputation especially when he is otherwise qualified.

Criteria laid down as per Government Order dated 08.04.2004 for the post of Project Director (Administration) is as follows:

i. State service / All India service in the pay scale Rs. 16,400 – 20,000.

ii. He should not more than 52 years.

Learned counsel for the petitioner has submitted that rider of 52 years is in respect of post outside the headquarter and for the post in the headquarter the upper age limit was 58 years and not 52 years.

Assuming that petitioner has not crossed the age 52 years yet he does not fulfil the order condition prescribed in the Government Order dated 08.04.2004 that he should be in the pay scale of Rs. 16,400 – 20,000.

This fact has not been disputed and since the petitioner was not eligible for appointment on deputation on the post of

Project Director (Administration) as per guidelines / criteria laid down in the above mentioned Government Order dated 08.04.2004, he has rightly been repatriated to the original department.

Learned counsel for the petitioner has submitted that some persons, who were not working in the pay scale of Rs. 16,400 – 20,000, have been working as Project Director on deputation.

Learned standing counsel has submitted that no person is appointed on deputation on the post of Project Director having pay scale less than of Rs. 16,400 – 20,000.

In view of the above, writ petition being devoid of merit is dismissed. Stay Application no. 11041 of 2006 is rejected accordingly. No order as to costs.

(Rajesh Tandon, J) **(M.M. Ghildiyal, J)**

November 15, 2006
SKSharma